

FWP COMMISSION AGENDA ITEM COVER SHEET

Agenda Item: Marias River WMA Access Settlement - Final

Meeting Date: July 10, 2013

Division: Wildlife

Action Needed: Final

Time Needed on Agenda for this Presentation: 30 minutes

Background

The Marias WMA is nine miles southwest of Shelby along the Marias River in Toole and Pondera counties. It consists of 7,540 deeded acres, 492 leased DNRC acres, and 833 leased BLM acres. The Marias River runs the entire 14-mile length of the property from west to east with wide riparian habitats and associated river breaks, all composed primarily of native habitat. Existing public access is on the north side of the WMA at the McCormick Road to a parking area; and on the north-central area at the Zel access. Both access points are to the WMA boundary and do not provide vehicle access to the river bottom.

After FWP acquired the property for \$7.6 million in 2008 it was determined an implied easement was established historically by Charlie Lincoln in 1951 for public hunting to the east via the Lincoln Road. Wanken Farms, however, disputed this and blocked the road before the property line between Wanken and the WMA. Good faith negotiations in 2010 and 2011 could not resolve the differences between Wanken Farms and FWP.

A lawsuit was filed in 2012 by FWP against Wanken Farms asking for a declaratory judgment identifying public and administrative access on the east of the WMA. Wanken Farms counterclaimed for trespass and abuse of process. A court ordered mediation was held on April 15, 2013. An agreement was negotiated: in return for a transfer of the 360 eastern-most WMA acres, Wanken would grant perpetual unlimited administrative access and limited public access across Wanken property. This would provide a southeastern access to the river bottom during hunting season and provide six parking spots, three for overnight. Administrative access on the Lincoln Road would also be included with administrative access on the two-track bench roads that traverse the property.

Public Involvement Process & Results

The agreement is subject to approval by the FWP Commission and the Land Board. The proposed settlement was approved by the commission on May 9, initiating a 30-day public comment period. A total of 47 comments were received. While there were comments of support, the strongest most consistent message was one of opposition or concern based upon "cost" and limited access. This theme of opposition was present throughout these 47 comments as well as informal individual conversations with inquiring members of the public. A public meeting held in Shelby on June 17 clearly reflected the same significant opposition. Twenty-two persons attended that meeting.

Alternatives and Analysis

The commission may approve or deny the proposed settlement. With approval, FWP would transfer 360 acres of the eastern portion of the WMA to Wanken Farms, and would secure a permanent ROW easement to the Charlie Lincoln homestead portion of the WMA. If denied, the lawsuit and counter suit would continue, with the outcome determined by the Court. Opportunity would still exist for alternative settlement until such time as a judge makes a final determination.

Agency Recommendation & Rationale

FWP and the landowner negotiated the terms of the settlement proposal in good faith with understanding that it was subject to public comment and commission approval. As such, FWP defers to the Commission as the final decision maker.

Proposed Motion

I move the FWP Commission APPROVE/DENY the proposed Marias River-Wanken Farms settlement agreement as described by FWP.